**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Court's order whether the case is or not approved for reporting )

(Chapter VIII, Rule 32(2) (b)

Description of the Case

**C- 482 No. 1009/ 06**
**Sukhveer Sharma**
**Vs**
**State of Uttaranchal**
**& others**

Approved for reporting
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Not approved for reporting

Date of decision 21.12.2006

Initials of Judge

**HIGH COURT OF UTTARANCHAL AT NAINITAL**

**C-482 NO. 1009 OF 2006**

Sukhveer Sharma,
S/o Shri Chotay Lal,
R/o Kali Niwas,
Near Dadu Bagh, Kankhal,
Tehsil & District- Haridwar,
Presently residing at- C/o Sanjay Kumkar Advocate,
Pahari Bazar, Kankhal. .....Applicant/Petitioner.

Vs.

1. State of Uttaranchal.
2. Kailash Charan, S/o Bani Charan, R/o – 60 Ambala Cantt. District- Ambala.
3. Anand Srivastava, S/o Shri Uma Charan,
4. Prabhat, S/o Shri Uma Charan

Both R/o 7/2 Manorama Ganj Indor, District- Indor through attorney holder Mahesh Kumar Nakli Ram, R/o Dadu Bagh Kankhal, Tehsil & District- Haridwar.

5. Sheesh Pal, S/o R/o Dadu Bagh, Kankhal, District- Haridwar.
6. Virendra Kumar, S/o late Ram Narayana, R/o Kali Niwas Near Dadu Bagh.

.....Opposite Parties/ Respondent.

***Mr. Nagesh Agarwal, counsel for the applicant.***
***Mr. D. Barthwal, counsel for the respondents no. 2 to 4.***
***Mr. Sanjeev Kaushik, counsel for the respondent no. 6.***
***A.G.A. for the State.***

**&**

**C-482 NO. 896 OF 2006**

Virendra Kumar,
S/o Shri Ram Narayan Singh,
R/o Kali Niwas,
Near Dadu Bagh, Kankhal,
P.S. – Kankhal, District- Haridwar,

.....Applicant/Petitioner.

Vs.

1. State of Uttaranchal.
2. Kailash Charan, S/o Bani Charan, R/o – 60 Ambala Cantt. District- Almora.
3. Anand Srivastava, S/o Shri Uma Charan,
4. Prabhat, S/o Shri Uma Charan

Both R/o 7/2 Manorama Ganj Indor, District- Indor through attorney holder Mahesh Kumar Nakli Ram, R/o Dadu Bagh Kankhal, Tehsil & District- Haridwar.

5. Sheesh Pal, S/o Bhagwan Dass, R/o Kali Niwas Dadu Bagh, Kankhal, District- Haridwar.

.....Opposite Parties/ Respondent.

***Mr. Sanjeev Kaushi, counsel for the applicant.***
***Mr. D. Barthwal, counsel for the respondent no. 2 to 4.***
***Mr. Nagesh Agarwal, counsel for the respondent no. 6.***
***A.G.A. for the State.***

**Hon'ble Rajesh Tandon, J.**

Heard counsel for the both the parties.

2. Since both the applications have been filed against the order dated 11.10.2005 by which the property has been attached by the City Magistrate and further the receiver disposed them without following the procedure of law, both are being decided together.

3. By the present application no. 1009 of 2006 filed under Section 482 of the Code of Criminal Procedure, the applicant has prayed for quashing the order dated 23rd November, 2006 passed by the revisional Court as well as order dated 30.09.2006 passed by the City Magistrate, Haridwar as well as order dated 11.10.2005 by which the property has been attached by

the City Magistrate and further the receiver dispossessed them without following the procedure of law.

4. By the application no. 896 of 2006, the applicant-Virendra Kumar has sought the following relief:

> *"It is, therefore, Most respectfully prayed that this Hon'ble Curt may be pleased to allow this application and the proceedings of Case No. 06 of 2004 under Section 145 Cr.P.C. State Vs. Kailash Charan and others and impugned order dated 11.10.2006 passed by City Magistrate Haridwar thereon under section 146(1) Cr.P.C. and order dated 30.10.2006 passed by Additional District & Sessions Judge IInd F.T.C. Haridwar in Criminal Revision No. 102 of 2006 Virendra Kumar Vs. Kailash Charan and others may kindly be quashed."*

5. According to Sukhvir Sharma, he is a tenant of the premises and application under Section 145 of the Code of Criminal Procedure was filed by one Kailash Charan without disclosing that Sukhveer Sharma is a tenant. When the Sukhvir Sharma came to know that some proceedings are going on before the City Magistrate, he moved an application for impleadment. The application for impleadment was rejected by the City Magistrate, Haridwar on 29.09.2006 and was directed to be listed for orders on 11.10.2006 under Section 146 of the Code of Criminal Procedure.

6. On 11.10.2006, the order was passed to the following effect:

> ''अतः मैं नगर मजिस्ट्रेट हरिद्वारा पक्षकारों को सुनने व पुलिस आख्या से सन्तुष्ट हूॅ कि कब्जे को लेकर विवाद की स्थिति बनी हुई है अतः उक्त विवादित सम्पत्ति जो थाना कनखल क्षेत्रान्तर्गत ज्वालापुर रोड पर स्थित मौहल्ला दादूबाग के ठीक सामने पि चम दिशा में काली निवास नाम से करीब 3 बीघा 16 बिस्वा जमीन स्थित है जिसमें चार आवास स्थित है जिसके पूर्व में दादूबाग आश्रम जिसकी सडक की तरफ को किरायेदार रहते हैं। पश्चिम में मकान मुकेश बहुगुणा उत्तर में खाली प्लाट पप्पू मौर्य, दक्षिण में गली एवं मकान रामकुमार अग्रवाल कलकत्ता वाले का है, स्थित को धारा 146(1) सी.आर.पी.सी. के अन्तर्गत कुर्क करता हूॅ और उक्त विवादित सम्पत्ति की देख रेख के लिये थानाध्यक्ष, कनखल हरिद्वार को रिसीवर नियुक्त करता हूॅ। थानाध्यक्ष उक्त विवादित सम्पत्ति को अपने कब्जे में लेकर आख्या इस न्यायालय को दिनांक 26.10.2006 सुनिश्चित करें।''

7. Thereafter, a revision was preferred being Revision No. 402 of 2006 Sukhbir Sharma Vs. Kailash Charan and others. The revision was also rejected vide order dated 23.11.2006 passed by the District & Sessions Judge, Haridwar. Hence the present application has been filed under Section 482 of the Code of Criminal Procedure.

8. Similarly according to Virendra Kumar, he is continuing to be in possession of his own rights of the property and during the proceedings under Section 146 (4), he has been dispossessed.

9. A perusal of the order dated 11.10.2006 shows that the property has already been attached and is in the *Supurdgi* of Police Station Kankhal, District Haridwar being receiver of the property.

10. On 8th December, 206, I have passed the order directing the SSP to appear in person. He appeared on 18th December, 2006 and has stated that on the directions of the City Magistrate he has taken the possession form the tenants.

11. As will appear from the array of the parties, respondents no. 2 and 3 have been shown to be represented through their Attorney Holder Mahesh Kumar Nakli Ram. However, the notices have already been sent by the office concerned.

12. In application No. 1009 of 2006, affidavit has been filed by Sri Raj Kumar Sharma with regard to the personal service and has stated that on 19th December, 2006 Sri Raj Kumar Sharma son of Sri Sukhbir Sharma tried to serve the power of attorney holder, but he has refused on the ground that the respondents no. 2, 3 and 4 are out of station and have gone to Bombay.

13. However, in the Petition No. 896 of 2006 Sri Alok Singh, Sr. Advocate, is already appearing as a counsel on behalf of the same parties.

14. I have perused the order passed by the City Magistrate, Haridwar passed under Section 145 of the Code of Criminal Procedure as well as the order passed

under Section 146 of the Code of Criminal Procedure- Section 146 of the Code of Criminal Procedure deals with the attachment of the property. Section 145 of the Code of Criminal Procedure provides that the Magistrate concerned shall decide, who was in possession by virtue of proviso of Sub Section (4) of Section 145 of the Code of Criminal Procedure. Sub- section (4) of Section 145 of the Code of Criminal Procedure provides as under:

> *"The magistrate shall then, without reference to the merits or the claims of any of the parties to a right to posses the subject of dispute, peruse the statements so put in , hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:*
>
> *Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1)."*

15. A perusal of the order passed under Section 146 of the Code of Criminal Procedure shows that the property has been attached and a receiver has been appointed who has further been directed to take

possession ion proceedings under Section 146(1) of the Code of Criminal Procedure. Section 146 provides as under:

> " ***146 Power to attach subject of dispute and to appoint receiver*** *–(1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach, the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:*
>
> *Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.*
>
> *(2) When the Magistrate attached the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 95 of 1908):*
>
> *Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate-*

*(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;*

*(b) May make such other incidental or consequential orders may be just."*

16. Section 146 of the Code of Criminal Procedure only provides the power to appoint receiver. There is no such power to take possession from the person in whose possession the property stands.

17. Both the Counsels appearing on behalf of the for the applicants have submitted that the City Magistrate has no jurisdiction to direct to receiver to take possession of the property and the said order is without jurisdiction.

18. Considered the scope of Section 146 of the Code of Criminal Procedure. Section 146 of the Code of Criminal Procedure safeguards the interest of the parties till the dispute is decided. Neither it confers upon the authority concerned to dispossess any person nor to put any person who was not in possession on the date of the passing of the preliminary order.

19. In view of the aforesaid observation, the order dated 11.10.2005 passed by the City Magistrate Haridwar in Case No. 6 of 2006 U/s 146 (1) Cr.P.C. is quashed so far

as it relates to a direction to the receiver to take the possession of the property.

20. Liberty is given to the City Magistrate to pass fresh order in the light of the observations made above and also taking into consideration the provisions of Section 146(1) of the Code of Criminal Procedure.

21. Subject to above, both the applications filed under Section 146 of the Code of Criminal Procedure are disposed of.

**(Rajesh Tandon, J.)**

21.12.2006
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